IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4596 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INKLAB NURMOHMADBHAI QURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4596 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu, has challenged the detention order passed against him by the detaining authority, by its order dated 6.3.2004

under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner for allegedly dealing in foreign liquor illegally. All the aforesaid cases are under the Bombay Prohibition Act. The authority, after considering the aforesaid cases and after considering the statements of two witnesses, whose names have not been disclosed to the petitioner, has detained him as a "bootlegger" under under PASA.

3. Learned Advocate for the petitioner submitted that the petitioner made a representation against such detention on 2.4.2004, which was received by the department of Home Ministry on 5.4.2004. It is submitted that, at the time of filing the petition, the petitioner has not received any reply of the said representation. However, it was pointed out by learned AGP that the representation of the petitioner before the State Government was decided on 13.4.2004 and the same was communicated to the detenu on 22.4.2004. Learned advocate for the petitioner submitted that there is a delay in forwarding the said representation, and therefore, on that ground, the petition is required to be allowed. However, it is submitted that the detaining authority has filed the reply but there is no proper explanation given regarding such delay in deciding the representation of the petitioner between 5.4.2004 to 13.4.2004, though the point of delay is already taken in the petition.

4. The learned advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the

representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how ti was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... ..."

5. In view of the aforesaid facts and circumstances of the case and in view of the fact that even the detaining authority has not despatched the representation to the State Government in time, and even the detaining authority has not properly explained the reasons for such delay and, therefore, on the ground of delay in forwarding the representation to the State Government, this petition is required to be allowed.

6. For the foregoing reasons, this petition is allowed. The order of detention dated 6.3.2004 is quashed and set aside. The detenu, Inklab Nurmohmadbhai Qureshi, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

7. At this stage, learned advocate for the petitioner has voluntarily made a statement that the petitioner will not enter into Rajkot City upto 31st October, 2004, unless he is required to appear in any other case for attending the court. Learned advocate for the petitioner has further submitted that she is making the statement after taking instructions from the detenu. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care of by the authorities.

(P.B. Majmudar, J.)

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